

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 22653-1-III

Respondent,

Division Three

v.

GREGORY V. BLOCKER,

UNPUBLISHED OPINION

Appellant.

**BROWN, J.**—Gregory V. Blocker pleaded guilty to second degree child rape. The sentencing judge suspended his sentence, granting a special sex offender sentencing alternative (SSOSA), RCW 9.94A.670. Following a revocation hearing, Mr. Blocker’s SSOSA was revoked and his sentence imposed. Mr. Blocker contends for the first time on appeal that he was denied allocution at the revocation hearing. We stayed Mr. Blocker’s appeal pending decision of this question in *State v. Canfield*, 154 Wn.2d 698, 116 P.3d 391 (2005). Considering *Canfield*, we affirm because Mr. Blocker’s limited right to allocution does not permit raising this issue for the first time on

appeal.

## **FACTS**

Following Mr. Blocker's guilty plea, the sentencing judge suspended his 78-month sentence, conditioned on SSOSA completion. SSOSA conditions included completing sex offender treatment, no contact with minors without a chaperone, no residing where minors are present except for immediate family, no sexual relations with anyone under the age of 18, and chemical dependency evaluation treatment. The Department of Corrections (DOC) later alleged nine SSOSA condition violations. The State then petitioned to revoke Mr. Blocker's SSOSA.

During the two-day revocation hearing, Mr. Blocker testified extensively, denying some and admitting other violations. In closing, Mr. Blocker's defense counsel asked the court to hear from "a couple of the family members . . . about sentencing issues." Report of Proceedings (RP) at 308. The court, without objection, replied, "I don't think there is really any need for the Court to hear from people other than the testimony fashion in this kind of case." RP at 308. Without inviting allocution, the court revoked Mr. Blocker's SSOSA and reinstated his original sentence. Mr. Blocker appealed.

## **ANALYSIS**

### **A. Allocution**

The issue is whether Mr. Blocker may allege for the first time on appeal he was denied his right to allocution in his revocation hearing. Mr. Blocker contends an offender facing SSOSA revocation has the same rights to allocution as a defendant facing initial sentencing. Mr. Blocker's contention and argument were recently rejected in *Canfield*.

Under RCW 9.94A.500(1), "[t]he court shall . . . allow arguments from the prosecutor, the defense counsel, [and] the offender . . . as to the sentence to be imposed." In *Canfield*, the court held a revocation hearing is not a sentencing hearing, but nevertheless, an offender has a "limited procedural due process right" to allocution at a revocation hearing. *Canfield*, 154 Wn.2d at 707. Consequently, "where a defendant *asserts his right to allocution*, the court should allow him to make a statement in allocution." *Id.* (emphasis added). To preserve this right, "the defendant must give the court some indication of his wish to plead for mercy or offer a statement in mitigation of his sentence." *Id.* The trial court need not invite allocution.

Here, while defense counsel asked permission for family members to address the court, Mr. Blocker did not assert his right to allocution prior to the court's ruling. This is unsurprising considering Mr. Blocker's extensive testimony and his summary four page response to his counsel's question: "Is there anything else you would like to tell the court about any of the violations?" RP at 215. At that point Mr. Blocker gave his lengthy plea for mercy and mitigation statement, followed immediately by his

treatment request. In any event, Mr. Blocker cannot raise this issue for the first time on appeal.

### **B. Additional Grounds**

Pro se, Mr. Blocker contends the court erred in revoking his SSOSA, an alternative permitting the court to suspend the sentence of a first time sexual offender if the offender is amenable to treatment. RCW 9.94A.670. The sentencing court may impose prohibitions or conditions on the offender's suspended sentence. An offender's SSOSA may be revoked at any time if a court finds the offender is failing to make satisfactory progress in treatment or the offender violates any of the conditions of the suspended sentence. *State v. Dahl*, 139 Wn.2d 678, 682-83, 990 P.2d 396 (1999). "Once a SSOSA is revoked, the original sentence is reinstated." *Id.* at 683.

Revocation of a suspended sentence is reviewed for an abuse of discretion. *State v. Kuhn*, 81 Wn.2d 648, 650, 503 P.2d 1061 (1972). Violation proof need only reasonably satisfy the court that the breach of condition occurred. *Id.*

While Mr. Blocker argues most of DOC's alleged violations are unfounded, he admitted having contact with a minor and having a drug problem. Either is a sufficient basis for revocation. See RCW 9.94A.670(10). Further, failing sex offender treatment is another independent basis for revocation. See *id.* Accordingly, the court did not abuse its discretion in revoking Mr. Blocker's SSOSA.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

Washington Appellate Reports, but it will be filed for public record pursuant to RCW  
2.06.040.

---

Brown, J.

WE CONCUR:

---

Schultheis, A.C.J.

---

Kato, J.